

## Internal Revenue Service

Department of the Treasury  
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Person To Contact:  
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Telephone Number:

Refer Reply To:  
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Date:  
December 13, 2010

Decedent =  
Date 1 =  
Date 2 =  
Trust =

Individual A =  
Individual B =  
Individual C =  
Individual D =  
Individual E =  
Individual F =  
Individual G =  
Individual H =  
Charity 1 =  
Charity 1 =  
Foundation  
Charity 2 =  
Charity 3 =  
Charity 4 =  
X =

Dear :

This letter responds to your submission dated June 11, 2010, and subsequent correspondence, requesting rulings concerning the reformation of a trust under § 2055(e)(3) of the Internal Revenue Code.

Decedent died testate on Date 1, a date after May 1, 2009. Under Decedent's will, the residue was bequeathed to Trust. Income is payable to Individual A and Individual B for their concurrent and consecutive lives. During that period \$2X is payable annually to

each of Charity 1 and Charity 2. Individuals A and B survived decedent, but are not individuals described in § 20.2055-2(e)(2)(vi)(a) of the Estate Tax Regulations. Trust terminates on the death of the last to die of Individual A and Individual B. At that time, \$25X is distributed to Charity 3, \$25X is distributed to Charity 4, \$10X is distributed to Individual C, and \$7.5X is distributed to each of Individuals D, E, F and G. The remaining trust corpus is then distributed one-third to Individual H, one-third to Charity 1 Foundation and one-third to Charity 2.

On Date 2, a date before the 90th day after the last date (including extensions) for filing Decedent's estate tax return, the executor of Decedent's estate commenced a judicial proceeding under the provisions of state law and § 2055(e)(3). The executor proposes to reform Trust to create two trusts, a charitable lead annuity trust (CLAT) and a charitable remainder unitrust (CRUT).

The CLAT will pay \$2X annually to each of Charity 1 and Charity 2 for a period of 22 years (the term corresponding to the actuarial life expectancy of Individuals A and B). On the expiration of the 22-year term, \$10X is distributed to Individual C; \$7.5X is distributed to each of Individuals D, E, F and G; and the remainder is distributed to Individual H. The trust will comply with the terms of Rev. Proc. 2007-46, 2007-1 CB 102, which contains trust provisions that meet the requirements for a testamentary charitable lead annuity trust providing for annuity payments payable to one or more charitable beneficiaries for the annuity period followed by the distribution of trust assets to one or more noncharitable remaindermen.

The CRUT will pay a unitrust amount to Individual A and Individual B or the survivor of them. On the death of the last to die of Individual A and Individual B, \$25X is distributed to Charity 3; \$25X is distributed to Charity 4; and the remainder is divided equally between Charity 1 Foundation and Charity 2. The trust will comply with the terms of Rev. Proc. 2005-59, 2005-2 C.B. 412, which contains trust provisions that meet the requirements for a testamentary charitable remainder unitrust with concurrent and consecutive interests for two measuring lives followed by the distribution of trust assets to a charitable remainderman.

Section 664(d)(2) provides, in relevant part, that a CRUT is a trust: (A) from which a fixed percentage (which is not less than 5 percent nor more than 50 percent) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in § 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals, (B) from which no amount other than the payments described in § 664(d)(2)(A) and other than qualified gratuitous transfers described in § 664(d)(2)(C) may be paid to or for the use of any person other than an organization described in § 170(c), (C) following the termination of the payments described in § 664(d)(2)(A), the remainder interest in the trust is to be transferred to, or

for the use of, an organization described in § 170(c) or is to be retained by the trust for such a use, and (D) with respect to each contribution of property to the trust, the value (determined under § 7520) of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

Section 2055(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers to or for the use of religious, charitable, scientific, literary, or educational organizations described in §§ 2055(a)(1) through 2055(a)(4).

Section 2055(e)(2) provides that where an interest in property (other than an interest described in § 170(f)(3)(B)) passes or has passed from the decedent to a person, or for a use, described in § 2055(a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in § 2055(a), no deduction shall be allowed under § 2055 for the interest that passes or has passed to the person, or for a use, described in § 2055(a), unless — (A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in § 664) or a pooled income fund (described in § 642(c)(5)), or (B) in the case of any other interest, such interest is in the form of a guaranteed annuity, or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

Section 20.2055-2(e)(1)(i) provides, in part, that in the case of decedents dying after December 31, 1969, where an interest in property passes or has passed from the decedent for charitable purposes, and an interest in the same property passes or has passed from the decedent for private purposes, no deduction is allowed for the value of the interest which passes or has passed for charitable purposes unless the interest is a deductible interest described in § 20.2055-2(e)(2).

Section 20.2055-2(e)(2)(vi)(A) provides that a deductible interest includes a charitable interest in the form of a guaranteed annuity interest. The term “guaranteed annuity interest” means the right pursuant to the instrument of transfer to receive a guaranteed annuity. A guaranteed annuity is an arrangement under which a determinable amount is paid periodically, but not less often than annually, for a specified term of years or for the life or lives of certain individuals, each of whom must be living at the date of death of the decedent and can be ascertained at such date. Only one or more of the following individuals may be used as measuring lives: the decedent's spouse, and an individual who, with respect to all remainder beneficiaries (other than charitable organizations described in §170, 2055, or 2522), is either a lineal ancestor or the spouse of a lineal ancestor of those beneficiaries. The rule in this paragraph that a charitable interest may

be payable for the life or lives of only certain specified individuals does not apply in the case of a charitable guaranteed annuity interest payable under a charitable remainder trust described in § 664. An amount is determinable if the exact amount which must be paid under the conditions specified in the instrument of transfer can be ascertained as of the appropriate valuation date. For example, the amount to be paid may be a stated sum for a term of years, or for the life of the decedent's spouse, at the expiration of which it may be changed by a specified amount, but it may not be redetermined by reference to a fluctuating index such as the cost of living index.

Section 20.2055-2T(e)(3)(iii) provides, in part, that if a guaranteed annuity interest created pursuant to a will or revocable trust of a decedent dying on or after April 4, 2000, uses an individual other than one permitted in paragraph (e)(2)(vi)(a) of this section, the interest may be reformed into a lead interest payable for a specified term of years. The term of years is determined by taking the factor for valuing the annuity or unitrust interest for the named individual measuring life and identifying the term of years (rounded up to the next whole year) that corresponds to the equivalent term of years factor for an annuity interest. For example, in the case of an annuity interest payable for the life of an individual age 40 at the time of the transfer on or after May 1, 2009, assuming an interest rate of 7.4 percent under § 7520, the annuity factor from column 1 of Table S(7.4), contained in IRS Publication 1457, Actuarial Valuations Version 3A, for the life of an individual age 40 is 12.1519 (1.00000 minus .10076, divided by .074). Based on Table B(7.4), contained in Publication 1457, Actuarial Valuations Version 3A, the factor 12.1519 corresponds to a term of years between 32 and 33 years. Accordingly, the annuity interest must be reformed into an interest payable for a term of 33 years. A judicial reformation must be commenced prior to the date prescribed by § 2055(e)(3)(C)(iii). Any judicial reformation must be completed within a reasonable time after it is commenced. Section 20.2055-2T(e)(3)(iii) applies on or after May 1, 2009. Section 20.2055-2T(f)(6).

Section 2055(e)(3) provides for the reformation of interests to comply with the requirements of § 2055(e)(2). Section 2055(e)(3)(A) provides that a deduction shall be allowed under § 2055(a) in respect of any qualified reformation.

Section 2055(e)(3)(B) defines the term “qualified reformation” to mean a change of a governing instrument by reformation, amendment, construction, or otherwise that changes a reformable interest into a qualified interest, but only if —

- (i) any difference between (I) the actuarial value (determined as of the date of the decedent's death) of the qualified interest, and (II) the actuarial value (as so determined) of the reformable interest does not exceed 5 percent of the actuarial value (as so determined) of the reformable interest;
- (ii) in the case of (I) a charitable remainder interest, the nonremainder interest (before and after the qualified reformation) terminated at the same time, or (II) any other interest, the reformable interest and the qualified interest are for the same period; and

(iii) the change is effective as of the date of the decedent's death.

Section 2055(e)(3)(C)(i) defines the term “reformable interest” to mean any interest for which a deduction would be allowable under § 2055(a) at the time of the decedent's death but for § 2055(e)(2).

Section 20.2055-2(a) provides, in part, that if a trust is created for both a charitable and a private purpose, deduction may be taken of the value of the charitable beneficial interest only insofar as the interest is presently ascertainable, and hence severable from the noncharitable interest. Thus, in the case of decedents dying before January 1, 1970, if money or property is placed in trust to pay the income to an individual during his life, or for a term of years, and then to pay the principal to a charitable organization, the present value of the remainder is deductible.

Section 2055(e)(3)(C)(ii) provides that the term “reformable interest” does not include any interest unless, before the remainder vests in possession, all payments to persons other than an organization described in § 2055(a) are expressed either in specified dollar amounts or a fixed percentage of the fair market value of the property.

Section 2055(e)(3)(C)(iii) provides, in part, that § 2055(e)(3)(C)(ii) does not apply to any interest if not later than 90 days after the last date (including extensions) for filing an estate tax return, if an estate tax return is required to be filed, a judicial proceeding is commenced to change the interest into a qualified interest.

Section 2055(e)(3)(D) defines the term “qualified interest” to mean an interest for which a deduction is allowable under § 2055(a).

Section 2055(e)(3)(E) provides that the deduction allowable under § 2055(a) for the qualified interest shall not exceed the amount of the deduction which would have been allowable for the reformable interest but for § 2055(e)(2).

In this case, the charitable interests constitute reformable interests under § 2055(e)(3)(C)(i) because as originally drafted, Trust provides for charitable interests that are presently ascertainable and, hence, severable from the noncharitable interests. Prior to the enactment of § 2055(e)(2), such interests would have been deductible under § 2055(a). See § 20.2055-2(a). Although the payments to Individual A and Individual B were not expressed in specified dollar amounts or a fixed percentage of the fair market value of the property as required by § 2055(e)(3)(C)(ii), a judicial proceeding was commenced, as provided under § 2055(e)(3)(C)(iii), before the 90th day after the last date (including extensions) for filing Decedent's estate tax return.

Further, the reformation satisfies the requirements of § 2055(e)(3)(B)(i), (ii) and (iii) because: (1) the difference between the actuarial value (determined as of the date of the Decedent's death) of the qualified interest and the actuarial value (as so

determined) of the reformable interest does not exceed 5 percent of the actuarial value (as so determined) of the reformable interest; (2) both before and after the reformation, in the case of the CRUT, the nonremainder interest terminates at the same time, and in the case of the CLAT, the reformable interest and the qualified interest are for the same period, see § 20.2055-2T(e)(3)(iii); and (3) the reformation is effective as of the date of Decedent's death.

Accordingly, based on the information submitted and representations made, we conclude that the reformation of Trust, as described above, will be a qualified reformation within the meaning of § 2055(e)(3), provided the reformation is effective under local law, and provided the CLAT meets the requirements of a guaranteed annuity interest under § 2055(e)(2)(B) and the applicable regulations and the CRUT meets the requirements of a charitable remainder unitrust under § 664(d)(2) and (3) and the applicable regulations. Subject to the limitation of § 2055(e)(3)(E), a charitable deduction will be allowable under § 2055(a) for the present value of the qualified interests determined under § 20.2055-2(f)(2)(ii) and (iv). However, we are specifically not ruling on whether the CRUT otherwise satisfies the requirements of § 664(d)(2) and (3) and the regulations thereunder. See Rev. Proc. 2010-3, 2010-1 I.R.B. 110, section 4.01(37).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

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JAMES F. HOGAN  
Chief, Branch 4  
Office of the Associate chief Counsel  
(Passthroughs & Special Industries)

Enclosure:  
Copy for § 6110 purposes (1)